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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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SOLUTIONSTREAM, a Utah limited liability  
company,

Plaintiff,

v.

3D FOOTPRINTS, an Oregon corporation,

Defendant.

**MEMORANDUM DECISION AND  
ORDER DENYING [14] MOTION FOR  
DEFAULT ON COUNTERCLAIMS**

Case No. 2:17-cv-00605-DN

District Judge David Nuffer

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In responding to the complaint by plaintiff SolutionStream, defendant 3D Footprints<sup>1</sup> asserted counterclaims with its answer.<sup>2</sup> The counterclaims were filed June 15, 2017. After more than seven months, SolutionStream had not filed a response to the counterclaims, although both parties participated in the litigation, including an attorneys planning meeting, in the interim. 3D Footprints has filed a Motion for Entry of Default (the “Motion”).<sup>3</sup> Just before the Motion was filed, on the same day, SolutionStream filed its Reply to Counterclaim.<sup>4</sup> The Motion can be resolved without a response from SolutionStream.

Applying Rule 55(a) of the Federal Rules of Civil Procedure, the Motion is denied. Rule 55(a), the rule governing entry of default, provides: “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by

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<sup>1</sup> The defendant contends that Cropper Medical, Inc. is the proper party in interest and that 3D Footprints is a DBA. For convenience, the defendant is referred to as “3D Footprints.”

<sup>2</sup> Answer by Cropper Medical, Inc. to Complaint, Affirmative Defenses and Counterclaims, [docket no. 4](#), filed June 15, 2017.

<sup>3</sup> [Docket no. 14](#), filed February 5, 2018.

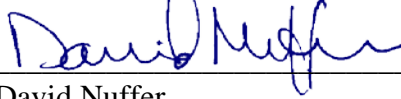
<sup>4</sup> [Docket no. 12](#), filed February 5, 2018.

affidavit or otherwise, the clerk must enter the party's default."<sup>5</sup> At the time the Motion was filed, SolutionStream had not "failed to plead or otherwise defend."<sup>6</sup> SolutionStream no doubt was alerted to the need to file its response by 3D Footprints' mistaken filing of a motion for default judgment—which must be preceded by entry of default under Rule 55. In any case, a default would not serve the purpose of Rule 55 here, where SolutionStream is actively litigating the case and a response to the counterclaims is now in the record.

THEREFORE, IT IS HEREBY ORDERED that the Motion<sup>7</sup> is DENIED.

Dated February 14, 2018.

BY THE COURT:



David Nuffer  
United States District Judge

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<sup>5</sup> Fed. R. Civ. P. 55(a).

<sup>6</sup> *Id.*

<sup>7</sup> [Docket no. 14.](#)